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IN THE
Supreme Court of the United States

OCTOBER TERM, 1947.

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NO. 442
—

RANDOLPH PHILLIPS, *Petitioner,*

v.

THE BALTIMORE & OHIO RAILROAD COMPANY, *Respondent.*

—
PETITION FOR REHEARING.
—

JOSEPH B. HYMAN,
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Alexandria, Va.
Counsel for Petitioner.

January 15, 1948.



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v.

THE BALTIMORE & OHIO RAILROAD COMPANY, *Respondent*.

PETITION FOR REHEARING.

Petitioner requests this Honorable Court, pursuant to Rule 33 of the Revised Rules, to grant a rehearing on the petition for certiorari and upon reconsideration to grant said petition.

The reasons for granting this petition are as follows:

- I. There is a question as to the qualification of Chief Justice Vinson to take part in the consideration and decision of this case.**

Chief Justice Vinson took part in the consideration and decision of this case. It appears to petitioner that a question may exist whether he is able to administer impartial justice in this case in the only possible reviewing court

by reason of his connection with (1) the subject matter of this case and (2) parties involved in this case.

The heart of petitioner's case is that this proceeding is the result of collusion between officials of the Reconstruction Finance Corporation and officers of respondent, some of whom are former officials of the RFC; that the preliminary and final decrees were procured by a fraud on this court, the court below, and respondent's creditors; and that the fraudulent arrangement between RFC and respondent, and the reorganization of respondent which it made possible has worked to the considerable detriment of the RFC and respondent's other creditors.

From March 8, 1945 to July 23, 1945, Chief Justice Vinson occupied the position of Federal Loan Administrator. In this position he supervised the administration and activities of the RFC. (See Reorganization Act of 1939 and President's Reorganization Plan No. 1 thereunder, dated April 25, 1939.) On April 2, 1945 the RFC agreed by letter of Chairman Henderson to accept the reorganization plan of respondent (See Petitioner's Exhibit 52.) Pursuant to that acceptance, respondent filed on July 2, 1945 its bankruptcy petition in the court below and hearings were held in that court on July 10 and 11, 1945, with respect to the "good faith" of respondent's filing. The record made before the U. S. Senate Committee on Banking and Currency shows that false testimony was given, and evidence of the collusion between RFC and respondent was suppressed and withheld from the court below and respondent's creditors by RFC and respondent during the court hearings.

The acceptance by the RFC of respondent's plan enabled respondent to complete the collusive arrangement entered into between RFC and respondent in March-April 1944 and to allege in its petition of bankruptcy its inability to meet its debts to the RFC except by reorganization.

While petitioner in no way means to indicate that Chief Justice Vinson had at any time knowledge of the suppres-

sion of evidence during his tenure nor the collusive arrangement entered into before his tenure as Loan Administrator, RFC's acceptance of respondent's plan on April 2, 1945 and its cooperation with respondent during the court hearings of July 10 and 11, 1945 were among the last steps in the collusive arrangement entered into by the RFC and respondent. Accordingly the competence and integrity of the administration of the RFC and the conduct of RFC officials during the Chief Justice's supervision of that agency is under attack in the present proceeding.

II. There is a question as to the qualification of Mr. Justice Reed to take part in the consideration and decision of this case.

Mr. Justice Reed took part in the consideration and decision of this case. It appears to petitioner that a question may exist whether he is able to administer impartial justice in this case in the only possible reviewing court by reason of his connection with the RFC and persons involved in this case.

The heart of petitioner's case is that this proceeding is the result of collusion between officials of the Reconstruction Finance Corporation and officers of respondent, some of whom are former officials of the RFC; that the preliminary and final decrees were procured by a fraud on this court, the court below, and respondent's creditors; and that the fraudulent arrangement between RFC and respondent, and the reorganization of respondent which is made possible has worked to the considerable detriment of the RFC and respondent's other creditors.

Mr. Justice Reed was General Counsel of RFC from December, 1932 to March, 1935. He occupied that position during the negotiation of the B. & O. loans from RFC and had the responsibility for various legal decisions with respect to these loans. During his tenure at the RFC, Mr. Justice Reed was closely associated with Jesse H. Jones, then RFC Chairman, and many of RFC's present officials.

In addition his associates in the legal division of RFC included respondent's present General Solicitor, and counsel on the brief in this proceeding, Mr. Frederick E. Baukhages, and its financial Vice President, Mr. Russell L. Snodgrass.

Petitioner has charged on the basis of the new evidence found by the U. S. Senate Committee on Banking and Currency that respondent's Vice President Snodgrass was respondent's principal agent in bringing about the collusive arrangement between RFC and respondent and thereby effecting respondent's present reorganization by fraud. Petitioner has also charged that Mr. Snodgrass concealed by perjury and suppression of evidence in the court below the true origins and nature of the present proceedings, and that in other improper ways, set out in the petition for certiorari, he has made every effort to carry out the scheme of the present collusive bankruptcy. Mr. Snodgrass' assistant during the period of preparing and prosecuting this collusive proceeding was respondent's General Solicitor Baukhages.

The part played in this proceeding by former Federal Loan Administrator and RFC Chairman Jesse H. Jones was an essential one. He appeared as witness for respondent in the proceeding below, but not as a witness before the U. S. Senate Committee on Banking and Currency, though invited to do so by its Chairman, and though respondent and RFC both presented witnesses of their own choice during the hearings before the Committee. Whatever the knowledge of Mr. Jones with respect to the events leading up to respondent's filing its petition in bankruptcy, the competence and integrity of his administration of the Loan Administration is at issue in this proceeding.

In this connection petitioner notes that on December 10, 1947, while this case was pending in this court, and after this court had ruled on a preliminary motion with respect to the record, a dinner was held in New York City in Mr. Jones' honor. The dinner was given by present and for-

mer RFC officials. The *New York Sun* of December 11, 1947 reported Mr. Justice Reed as having attended the dinner, and other newspaper reports indicate that speeches were made at the dinner attacking critics of RFC and its administration.

Respectfully submitted,

JOSEPH B. HYMAN,
215 North Pitt Street,
Alexandria, Va.

January 15, 1948.

I, counsel for the petitioner herein, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

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JOSEPH B. HYMAN,
Counsel for Petitioner.